Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

Saturday, April 16, 1955 Vol. CXIX. No. 16

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

CITY OF BRADFORD

Deputy Clerk to the City Justices

APPLICATIONS are invited for the appointment of Deputy Clerk to the Bradford City Justices. The salary payable is £1,266 13*s.* 4*d.* per annum, rising by annual increments of £33 6*s.* 8*d.* to £1,433 6*s.* 8*d.* per annum. Applicants should have considerable experience in magisterial law and practice and be able to take complete control of the staff and office in the absence of the Clerk.

The post is superannuable and subject to a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than April 30, 1955. Envelopes should be marked "Deputy Clerk."

FRANK OWENS,
Clerk to the Magistrates' Courts Committee.

Town Hall,
Bradford.

BERKSHIRE COUNTY COUNCIL

APPLICATIONS are invited for the appointment of Assistant Solicitor, salary within Grade A.P.T. VI (£825—£1,000). Candidates should preferably have been admitted for at least two years and have previous local government experience.

Fuller particulars, with forms of application, from the undersigned. Closing date April 30, 1955.

E. R. DAVIES,
Clerk of the Council.

Shire Hall,
Reading.

MIDDLESEX COUNTY COUNCIL

JUNIOR Conveyancing Clerk, A.P.T. 1 (£530 × £20—£610, including London Weighting) required in Department of Clerk and Solicitor. Established, pensionable, subject to probation and prescribed conditions. Good hours and holidays, staff canteens, etc. Two free Saturdays in four. Write stating age, education, experience, qualifications, to Clerk of the County Council, Ref. "C," Guildhall, Westminster, S.W.1., by April 23 (quote Q.271 J.P.). Canvassing disqualifies.

CITY OF BRADFORD

Justices' Clerk's Office

Appointment of Fourth Assistant

APPLICATIONS are invited for the appointment of Fourth Assistant in the office of the Clerk to the Justices for this City. Applicants should have a good general experience of magisterial law and practice. The salary will be within the range £600 — £725 (according to qualifications and experience). This will be subject to adjustment when an Award is made in respect of Justices' Clerk's Assistants.

The post is superannuable and subject to a medical examination.

Applications, stating age, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than April 30, 1955. Envelopes should be marked "Fourth Assistant."

FRANK OWENS,
Clerk to the Magistrates' Courts Committee.

The Town Hall,
Bradford.

BOROUGH OF GILLINGHAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment. Experience of conveyancing and advocacy necessary, but previous local government service not essential. The appointment will offer wide opportunities for obtaining an all-round experience of local government law and administration.

Salary £780 rising to £900. The National Conditions of Service and the Local Government Superannuation Acts, 1937 to 1953, will apply to appointment.

Applications, giving the names of two referees, to be forwarded to the undersigned by [not later than April 30, 1955.

Canvassing directly or indirectly will disqualify.

FRANK HILL,
Town Clerk.

Municipal Buildings,
Gillingham,
Kent.
April 15, 1955.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

Blaydon and Jarrow Petty Sessional Divisions

Appointment of Chief Assistant to Justices' Clerk

APPLICATIONS are invited for the above appointment. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office and be capable of taking complete charge in the absence of the Clerk, including taking the Courts.

The salary will be in accordance with A.P.T. Grade V (£750 × £30—£900).

The appointment is superannuable and the person appointed will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than April 30, 1955.

J. K. HOPE,
Clerk to the Committee.

Shire Hall,
Durham.

COUNTY BOROUGH OF GRIMSBY

Appointment of Children's Officer

APPLICATIONS are invited from suitably qualified men and women for the appointment as Children's Officer for the County Borough of Grimsby. The salary paid will be in accordance with the present A.P.T. Grade V of the National Scheme of Conditions of Service (£750 × £30—£900).

The appointment will be superannuable, and the successful candidate will be required to pass a medical examination. Further particulars may be obtained from the undersigned to whom applications must be forwarded not later than 14 days after the date of publication of this advertisement. No testimonials need be enclosed with the application but the applicant should forward the names of three persons to whom reference can be made.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Grimsby.

BOROUGH OF BANBURY

Appointment of Town Clerk

APPLICATIONS are invited for the above appointment, which will become vacant on July 1, 1955, from solicitors with considerable experience in local government law and administration. The salary (£1,360 × £52 10*s.* —£1,570 per annum) and conditions of service are in accordance with the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks, including the recent increase.

Form of application may be obtained from the undersigned, by whom applications, endorsed "Town Clerk" must be received not later than April 30, 1955. Canvassing disqualifies and candidates must disclose, in writing, whether to their knowledge they are related to any member of the Council or to the holder of any senior office under the Council

E. OWEN REID,
Town Clerk.

Muncipal Buildings,
Banbury.

Justice of the Peace
and
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NOTES OF THE WEEK

Evidence Act, 1938: "Person Interested"

A preliminary judgment of Barry, J., in *Cartwright* v. *W. Richardson & Co., Ltd.* [1955] 1 All E.R. 742, dealt with a question of the admissibility in evidence of a written statement that had been made by a witness after an accident and some years before he was called to give evidence. One of the points to be considered was whether that witness was a "person interested," making a statement, at a time when proceedings were pending or anticipated, about a matter in dispute.

When the witness made his statement in 1951 he was in the employment of the defendant company, but apparently he did not sign and verify it until 1955. In dealing with this aspect of the case, the learned Judge said he thought it was highly probable that the witness was a "person interested" at the time when he made his statement, and that was the material time. Having regard to his very close association with the work which was being carried out when the accident occurred, and having regard to the then interest that his employers should be successful in any litigation, the learned Judge thought the witness ought to be regarded as a "person interested" at the time that the statement was made. The fact that he was not in the defendants' employment at the time when he merely signed the statement in order to acknowledge that it had been made by him did not alter the position, which must be judged, as at the time when the statement was made.

On this and another ground the statement was not admitted.

A Point Under the Food and Drugs Act

We are much indebted to the correspondent who at 118 J.P.N. 143, over the pseudonym "Silabis," questioned the correctness of an answer we gave at 117 J.P.N. 646, for having sent to us a transcript of the case of *Telford* v. *Fyfe* (1908) S.C.(J.) 83, and for saying quite candidly that he is now of opinion that the submission he made at 118 J.P.N. 143, cannot be maintained.

We expressed our own opinion with some hesitation, but it is borne out by the Scottish decision. In the course of his judgment, when dealing with the question of the number of summonses, Lord Ardwall said: "I am of opinion that while the respondent was entitled to take a sample from each can, yet it was not competent for him to sue for a separate penalty in respect of each individual can. The sale and delivery of the whole of the milk in question on the day libelled was one transaction and one act, and in my opinion it was wholly incompetent to sue for a separate penalty in respect of each and any portion of the milk so sold. Such a proceeding might be carried on indefinitely according to the size and number of vessels in which any sale of milk in bulk happened to be obtained, and what was really one act of infringement of the Food and Drugs Act would by this means be converted into as many acts as there were vessels, which seems to me to be absurd."

Prevention of Juvenile Delinquency

At the present time, juvenile delinquency seems to be on the decrease, after a period of disquieting increase. The increase naturally caused the various bodies, official and unofficial, who are interested in young people and their welfare, to get together and try to find means of combating what was often described as the wave of juvenile crime. Without doubt their efforts have contributed to the improved position.

In Liverpool some five years ago a liaison officer was appointed who was, if we understand aright, a police officer with the special duty of keeping in touch with youth agencies and officials dealing with children, and of bringing to notice cases of petty offences by children when it seemed unnecessary at that stage to bring them before the juvenile court. It is claimed that the scheme has yielded excellent results. Now we read in the *Yorkshire Post* that Huddersfield, encouraged by the example of Liverpool, is taking steps to establish a similar scheme.

The idea is attractive, and if it has proved its value it is worth following up. At the same time, we do well to remember that there has been a substantial reduction in juvenile crime in places where there has not been any scheme on these lines, and that the reduction in any

given place must be attributed to more than one cause. The liaison officer schemes seem to be hailed now as a means of keeping children out of the juvenile court, and that raises several questions.

Keeping Children Out of Court

When juvenile courts were introduced by the Children Act, 1908, their advent was acclaimed on all sides, and it was said that now children would be brought far more readily before the court, because the new courts would involve neither the publicity nor the disgrace attaching to appearance before what was then called the police court. Besides, there would be magistrates who were interested in children and who would understand their needs and problems, armed with new powers. In fact there was a great influx of cases in some districts. More or less the same position arose after the coming into operation of the Children and Young Persons Act, 1933. Today, however, we hear from many quarters the plea to keep children, perhaps many of them, out of court.

Within limits, this is sound. It is not desirable that every small child found committing a petty offence should be arrested and have to appear in court. Most people would concede some little discretion to the police. Too wide a discretion in the matter of police warnings is open to certain objections which are dealt with generally in an article at 118 J.P.N. 229. We understand that what happens under some of the new schemes, is, however, distinct from a police warning. The case of the erring child who is thought not to be in need of being dealt with by legal process, but is in danger of becoming a young delinquent, is brought to the notice of an unofficial body, representative of the churches, teachers and youth organizations. These invite interviews with parents and children and try to help and influence them so as to make other offences unlikely. Thus only the more serious offences, or the most persistent young offenders are usually brought before the court.

These experiments are worth watching and if they continue to achieve success no one will wish to deny them credit. Care must be taken to see that parents understand the voluntary basis of such a system, and that there is no confusion between the unofficial body, without legal sanctions, and the juvenile court with its compulsory powers. There must be no question of the substitution of a committee for the court. True, there are some who would like the work of juvenile courts to be handed over to something like welfare committees. They object to any kind of criminal procedure in the case of juveniles. We do not agree with that outlook, but whether it be right or wrong the fact remains that as the law now stands the juvenile court is the proper tribunal for those whom it is necessary to deal with as offenders. Keeping young offenders out of court is not always the best way of reforming them, though in some instances there is a great deal in its favour.

This kind of preventive work, with the police co-operating, has its advantage. It would be a pity, however, if the public gained the mistaken impression that the juvenile courts had failed and were being replaced by another kind of organization.

A Chance for an Old Offender

Dealing with a man who had been described by the police as a persistent thief, a learned recorder said the Prison Commissioners had reported recommending a sentence of preventive detention for not less than seven years, but he was going to take a great risk with the prisoner and make an order of conditional discharge. This was in view of a letter from the secretary and warden of an association who had had the prisoner under his care and found him a good job in which he would not be subject to temptation. He believed he could make something of the man. The recorder exhorted the prisoner to take advantage of this last chance.

The increased use of probation and conditional discharge at the higher courts is much appreciated by probation officers, as their annual reports continually show. They, and all those others who believe in a wide, though always discriminating use of probation, are glad to read of cases when courts of quarter sessions, Judges of Assize, and sometimes the Court of Criminal Appeal, take the risk of giving one more chance to an old offender who shows signs of wanting to make a fresh start.

The ordinary member of the public is sometimes sceptical about this kind of thing, and is inclined to ask what has become of the deterrent object of punishment if old offenders, ripe for preventive detention, are to be let loose.

The first point to be emphasized is that they are invariably warned in the most serious way that this is likely to be the very last time that leniency will be extended, and that the commission of a further offence will almost certainly be visited with a long sentence. Further, there is the important question of results. The press can help in this matter by giving publicity to any cases in which leniency has been abused and the offender has received condign punishment. If the public is made aware that the courts mete out the treatment which they have said will follow disregard of their warnings, there will be a general realization that leniency does not betoken weakness or sentimentality. Those offenders who, having been given a chance, take advantage of it and continue to live honestly and respectably, naturally do not reappear in the courts or in the news, and they are entitled to obscurity. The reports of probation officers can, and often do, refer to successes of this kind, and the more widely the public can be made aware of the facts, the better will be the appreciation of what the courts are doing.

Case Remitted to Magistrates' Court by Quarter Sessions

Among the powers that can be exercised by quarter sessions upon the hearing of an appeal from a magistrates' court is that of remitting the matter with the opinion of the court thereon. This power is not often exercised, as the court usually confirms, modifies or reverses the decision of the magistrates' court, and the question is sometimes asked, in what circumstances is it likely that a case will be sent back from quarter sessions to the magistrates' court with an expression of opinion?

An interesting example of remitting a case, though not on an appeal, is reported in *The Justices' Clerk* (the bulletin of the Justices' Clerks' Society). Very briefly, the facts were that the accused had pleaded guilty to one indictable offence, which was dealt with summarily, and to one summary offence. He made a statement in mitigation which in no way suggested any ambiguity in his plea. After hearing about the accused's character and antecedents the justices committed him to quarter sessions for sentence in respect of the indictable offence, and passed a sentence of imprisonment for the summary offence. At quarter sessions the accused asked the learned recorder to be allowed to change his plea. The recorder heard arguments about relevant cases and a statement on oath from the appellant, and remitted the case to the magistrates to allow the accused to make an application for leave to change his plea. Before the magistrates who had committed the appellant for sentence, arguments were put forward on both sides on the question whether the magistrates had the power to entertain an application for a change of plea, and also on the question whether

the recorder had the power to remit in such circumstances.

The justices decided that they had power to entertain the application, but after hearing counsel for the accused, declined to allow him to change his plea, and again sent him before the learned recorder, who was still sitting. The recorder then sentenced the accused to two years' corrective training.

Land Surplus to Public Requirements

Recently this question was ventilated in the House of Commons when a number of members supported an amendment (subsequently withdrawn) to the London County Council (General Powers) Bill deferring a second reading.

One of the main objections of those members was to cl. 32 in Part VI of the Bill. This clause deals with the compulsory acquisition and use of land by public authorities. The first paragraph of subs. (1) reads as follows:

"The Council may (with the consent of the Minister) lay out and develop any land within the county for the time being belonging to them and not required for the purpose for which it was acquired or has been subsequently appropriated and may on any such land erect and maintain houses shops offices warehouses and other buildings and construct sewer drain pave channel and kerb streets . . ."

Clause 32 does not confer any new powers of compulsory acquisition in law on the county council but it does give a wider general power to develop commercially sites which are acquired for non-commercial purposes than exists under any other public general Act.

The objections voiced in relation to the clause came under three main categories. First, that the clause put a profit motive into the compulsory acquisition of land by enabling the London County Council to treat surplus land as a means of swelling revenue. Objection number two was that it put the London County Council as a local authority into business as a commercial developer of offices, shops and warehouses with all the implications of these activities such as increased staff, etc. The last main criticism was that the clause provided a standing temptation to the county council to over-estimate the amount of land required for statutory purposes in compulsory purchase orders in order to have the possibility of revenue from surplus land which remained over when the statutory purposes had been satisfied.

We think that these criticisms are well directed. It is obvious that owing to the possibilities of changed circumstances a local authority cannot always assess its land requirements with complete precision. On the other hand the feelings of an owner who has been compulsorily bought up for public purposes when he sees his late property (now surplus) put into extensive commercial use by a local authority may be well imagined! It is really not desirable for our public local authorities to enter the commercial field, especially when their so doing appears to be at the expense of the individual.

SPEED LIMITS

In the House of Lords on March 15, Lord Goddard advocated abolition of speed limits for motor cars (or at least suggested that abolition ought to be considered) upon grounds which seem (*The Times*, March 16, 1955) the same as were urged by a midland counties magistrate in a letter at 102 J.P.N. 497, 18 years ago. For all that time and indeed much longer the argument has been going on. Speed, in itself, is nothing. Twenty miles an hour with defective brakes and an unskilful driver is as dangerous as, with all other conditions the same, 60 miles would be for a car with proper brakes in the hands of Stirling Moss. Every speed limit, the standard 30 of today, the old 12, the 25 of the royal parks of which Lord Goddard particularly spoke, is therefore arbitrary. The driver, the road surface, the weather, and the number of vehicles and pedestrians within range, all come into the question. Moreover, when our correspondent wrote in 1937, the power of engines, the quality of roads, and the capacity of brakes, were different from what they are today, so that 30 miles an hour also meant something relatively different—relative, that is to mechanical possibilities and the psychological appreciation of speed. The figure of 30, in this context, nowadays wears a look so old fashioned that, as Lord Goddard recognized, few people take it seriously, and when a speed limit prosecution comes before magistrates they are apt to treat the offence as venial, if no harm has been done to persons or property and no danger has been proved. It is close on 50 years since Sir Thomas Ingell, Bt., J.P., was created, and an air of plausibility bestowed upon his £70 from one road alone as a monthly "target" (to quote this word from the plaintiff's opening statement in *Iwi* v. *Montesole*, *The Times*, March 8, 1955) "dead straight, three-quarters of a mile . . . you ought to have one your side the county, Mike. They simply can't resist it." Sir Thomas had been in a position 20 years before to order the sexton to remove the font from the parish church, to make way for a new one presented by himself, so he was not a young man when the story opened. Indeed his whiskers—the careful reader may notice—changed from grey to white in the course of 15 pages. Having apparently been placed upon the bench as a reward for services to the party that came into power in 1906, and being already chairman of the bench by 1917, he must by now, if still alive and still in the commission of the peace, have fallen beneath the axe of s. 4 (4) of the Justices of the Peace Act, 1949. Be this as it may, his attitude towards motorists is as obsolete as his practice of riding to the magistrates' court on a grey horse. So is the crude method of checking speed by trap and stopwatch: superseded by pursuit in a police car, with speedometer —a method that has legal complications of its own, as may be seen by comparing Lord Goddard's observations (and his overlooking of the reference to police vehicles in s. 3 of the Road Traffic Act, 1934) with *Strathern* v. *Gladstone* (1937) S.C. (J.) 11; 102 J.P.N. 477.

There is, however, this trouble about getting rid of any figure once established on the statute book—arbitrary though it may be, it exists. The same is true in many contexts, and not of figures only.

If a Minister proposed to Parliament that the present 30 miles should be increased to 40, this would be just as arbitrary: it obviously has more relation to present day realities than 30, but who can say how long it will be before 40 itself seems obsolete? The same could be said if 50 or 60 were proposed. On the other hand, such a Minister would have laid himself open to attack as having proposed a reduction in the safety margin. All the more so if a Minister had the hardihood to propose getting rid of the principle of an arbitrary limit, and relying on the law of dangerous driving, as Lord Goddard would apparently prefer. On the whole, we are inclined to think the law on this point will remain substantially unaltered: legislators will shrink from abolishing all limits, and nobody can prove that any new arbitrary limit would be better than the old.

DISPENSING WITH CONSENT TO ADOPTION

By J. V. ROBSON

Justices, when sitting as a juvenile court hearing applications for adoption orders, at any time may be called upon to decide the important question of whether or not the consent of any particular person should be dispensed with under the authority given to them by the Adoption Act, 1950. Section 3 gives the court this authority and provides that the court may dispense with consent if it is satisfied:

(*a*) that a parent or guardian has abandoned, neglected or persistently ill-treated the infant;

(*b*) that a person liable by virtue of an order or agreement to contribute to the maintenance of the infant has persistently neglected or refused so to do;

(*c*) in any case, that the person whose consent is required cannot be found or is incapable of giving consent or that consent is unreasonably withheld.

A court must be very reluctant to dispense with the consent of a parent or guardian having regard to the irrevocable nature of an adoption. Abandonment is presumably intended to mean an existing abandonment and not one which has been terminated. It would be an injustice to dispense with a mother's consent in a case where she had previously abandoned her infant but had since recovered the child and was trying to atone. Abandonment implies " leaving the child to its fate " *Mitchell* v. *Wright* (1905) 7 F. (Ct. of Sess.) 568. In the case of *R.* v. *White* (1871) 36 J.P. 134, it was held that a father knowingly leaving his child for some hours outside his house after it had been left there by his wife, with whom he was not living, was guilty of abandonment. *See* also *R.* v. *Falkingham* (1870) 34 J.P. 149, of other circumstances constituting abandonment. These decisions are, of course, based on the criminal law, but would appear to be equally applicable to adoption proceedings which are in the nature of civil cases where normally the preponderance of evidence or even the balance of probability, might properly be taken into account.

In the 1926 Adoption of Children Act, now repealed, consent could be dispensed with on the ground of desertion. This does not appear in the 1950 Act, but it is possibly significant that the dictionary definition of " abandon " includes " to desert." How far a juvenile court will construe a case of a parent leaving an infant cared for by other people and taking no further interest in it as abandonment or neglect will probably depend upon the particular facts, but on the balance of considerations it would probably be justified in so deciding. It would hardly be justified, however, if there was a *bona fide* intention to return and the parent was providing certain necessities. Some courts, bearing in mind what constitutes desertion in matrimonial proceedings, may feel that an infant can be deserted without being abandoned.

Neglect was defined in *R.* v. *Senior* (1899) 63 J.P. 8, as "the want of such reasonable care as an ordinary parent would use for the care and protection of his child." So far as this is to be treated as a ground for dispensing with consent, as in the case of ill-treatment referred to later, it is probable that the parent or guardian will have been involved in criminal proceedings in which case the court will have the benefit of the result of those proceedings to guide it.

Ill-treatment may be considered as a course of active misconduct designed to cause injury to a child. Before the court can dispense with consent on this ground it must be proved that the ill-treatment has been persistent. An isolated act of ill-treatment, though unfortunate, cannot be persistent, but continuous beatings would be. It must be stressed, however, that actual physical violence is not essential to constitute ill-treatment. In passing, it may be of interest to state that courts in Scotland have had the power to dispense with consent for neglect or persistent ill-treatment since 1930 whereas this is a new provision of the 1950 Act which did not appear in the 1926 Act.

It might be that a court is asked to make an adoption order in favour of grandparents and that the consent of an erring daughter should be dispensed with, she being the mother of the infant. *Re A.B.* (*an Infant*) [1949] 1 All E.R. 709; 113 J.P. 353, stressed that an order made in favour of grandparents should only be made in special circumstances. Where there is an erring mother, those circumstances may very well exist, but in all cases the above decision should not be overlooked.

Little difficulty should be experienced in dispensing with the consent of a person liable to maintain. One interesting thought is whether the word " persistently " covers both the neglect and refusal or the neglect alone. One brief instance of neglect is not sufficient to justify dispensing with consent but *quaere* whether one instance of refusal would be. It is noticed that s. 51 of the National Assistance Act, 1948, in dealing with failure to maintain reverses the sequence and speaks of persistent refusal or neglect. It is probable that for adoptions both the neglect and refusal must be persistent. The word " wilful " is not used in the section and it can be argued that a person who has not refused to make payments but has failed to do so owing to disability, etc., should not be considered as having persistently neglected to contribute. Consents in this type of case, however, could in proper cases be dispensed with on the ground of unreasonable withholding of consent.

The court has power to dispense with the consent of any person who cannot be found. It is suggested that this provision should not be accepted too lightly. The court must be satisfied that stringent inquiries have been made and all avenues explored to trace the person whose consent is required. A very grave injustice might result if the matter was not fully investigated by the guardian-*ad-litem* and the court was tempted to treat the application in a perfunctory manner.

One incapable of giving consent presumably means one who is insane, imbecile, mentally defective or void of understanding so as not to know what consent means. In this respect, the court will need to consider the possible duration of the incapacity and proceed with great caution where this may be of a temporary nature. Medical evidence is of great value in this type of case and should normally be insisted upon. This provision would not apply to anybody in prison or a place of similar confinement where the person could be contacted for consent.

That the court can dispense with the consent of any person whose consent is unreasonably withheld has received judicial consideration. Home Office memorandum dated January, 1950, stated that this ground transferred the emphasis from the demerits of the adult to the interests of the welfare of the child. *Hitchcock* v. *W.B.* [1952] 2 All E.R. 119; 116 J.P. 401, has decided that the child's welfare is not the sole test but the attitude of the parent, *i.e.*, whether he is unreasonable, as a parent, in withholding consent is to be determined. If a parent does not wish for the adoption to take place the burden of displacing the conclusion that the withholding of consent is reasonable lies on the person who asserts that the refusal is

unreasonable. The principle paramount in guardianship cases —the welfare of the child—must be joined with the issues of parental relationship. This decision was followed in *Re Kuzmicz (an Infant)* [1952] 2 All E.R. 877; 117 J.P. 9, where it was stated that the withholding of consent cannot be held unreasonable merely because the order, if made, would conduce to the welfare of the child or because a documentary consent given under the Act had been subsequently withdrawn.

The court has power to dispense with the consent of the spouse of an applicant for an adoption order if satisfied that that person cannot be found or is incapable of giving consent or that the spouses have separated and the separation is likely to be permanent. That the spouses have separated and are living apart is a question of fact, but justices will have to use considerable imagination when deciding that the separation is likely to be permanent. It will be able, no doubt, to obtain some idea of the intentions of the spouses from their demeanour and reactions. It is obvious that an adoption by one spouse without the consent of the other could lead to considerable difficulties and the court's discretion should not be exercised lightly.

Though the court has power to dispense with the consent of a person it has no power *vide* the Adoption of Children (Summary Jurisdiction) Rules, 1949, to dispense with the issue to such person of a notice of the hearing of the application. That every respondent should normally get a notice is essential, particularly where consent is in issue, but in one respect it is felt the absolute rule should be relaxed and this is where consent is asked to be dispensed with on the ground that the person whose consent is required cannot be found. It is little short of useless serving a notice at a last known address (r. 31) which might be anything up to 20 years old. In fact, such a requirement might easily jeopardize the confidential nature of the proceedings. It seems reasonable in such cases that the court which possesses power to dispense with consent, on being satisfied that all efforts to trace the person concerned have failed, should have power to dispense with the notice. Where the person concerned is missing only recently the service of a notice may be justified. It is hoped the court will be given power to dispense with service where necessary when the occasion arises but at present it is believed most courts feel they are able to proceed with the application despite the fact no notice has been served.

A consent must be dispensed with only on one or more of the grounds laid down by law. In *Re R.M. (an Infant)* (1947) 111 J.P.N. 683, the Court of Appeal allowed an appeal by an adoptive mother whose consent had been dispensed with in an application for a second adoption order holding that there were no grounds for dispensing with her consent.

The court must be satisfied in all cases on the best possible evidence (adoption proceedings are subject to the rules of evidence just as much as other proceedings) and be completely satisfied that the order if made will be for the welfare of the infant and that every person whose consent is required has consented or the consent has been dispensed with according to law.

LOCAL AUTHORITIES AND THE WELSH CHURCH ACTS

DISESTABLISHMENT

The question of the disestablishment of the church in Wales was one about which many Welshmen felt most keenly after the appearance of nonconformity in Wales; they maintained that the Welsh church was nothing more than the Church of England in Wales, and was in fact an alien church.

The disestablishment of the Irish church in 1869 led many Welsh nonconformists to agitate for the disestablishment of the Welsh church, and a Bill was introduced in the House of Commons providing for disestablishment, and for the financial resources of the church to be allocated to a secular national education system. The motion was, however, defeated by a large majority, and various other Bills with the same purpose were also thrown out.

Gladstone, a devout Anglican, opposed disestablishment on the ground that the church in England and Wales was one and indissoluble: he retired in 1894, and after the Liberals returned to power with an increased majority in 1905, a Royal Commission was appointed in 1906. The information obtained by the Commission showed that 74 *per cent.* of full members of Protestant churches in Wales were nonconformists as against 26 *per cent.* Anglican. A Bill providing for disestablishment and the partial disendowment of the church in Wales, based upon the recommendation of the Royal Commission, was twice rejected by the Lords, but became law in 1914 through the operation of the Parliament Act.

STATUTORY PROVISIONS

Owing to the outbreak of war in 1914, it was not possible to proceed with disestablishment, and it was, therefore, deferred by the Suspensory Act, 1914. The Welsh Church (Temporalities) Act, 1919, made certain amendments to the principal Act, and fixed the date of disestablishment at March 31, 1920.

The effect of the Acts of 1914 and 1919 was to leave the church in Wales in possession of all churches, parsonages, fabric funds, property representing grants from Queen Anne's bounty, and all private benefactions made since the year 1662. The remainder of the property of the church consisting of endowments, etc., made prior to 1662 was to be transferred to the Welsh county and county borough councils and the University of Wales.

In accordance with the terms of the Act of 1914, a body called the Commissioners of Church Temporalities in Wales—known as the Welsh Church Commissioners—was appointed in September, 1914, to give effect to the scheme of disendowment. Its first principal task was the ascertainment of Welsh ecclesiastical property, but on and after March 31, 1920, it became responsible for the management of the property vested in it by the Acts of 1914 and 1919, and also for determining the devolution of the property. The Representative Body of the Church in Wales became entitled to a capital sum equal to the aggregate value of the interests of holders of ecclesiastical offices. In accordance with the Welsh Church (Burial Grounds) Act, 1945, burial grounds which were vested in the Welsh Church Commissioners by virtue of the 1914 Act, were vested in the Representative Body, who then became responsible for their restoration and maintenance.

DISTRIBUTION OF FUNDS

Section 8 of the 1914 Act provided that the Welsh Church Commissioners should distribute certain property to the Representative Body, to incumbents and to the University of Wales, and for the following property to be handed over to the county and county borough councils:

(*a*) Tithe rentcharge formerly appropriated to parochial benefices in accordance with the situation of the land on which charged.

(*b*) Other property formerly appropriated to parochial benefices according to the situation of the parish to which the property was appropriated.

Details of the amounts distributed to the University of Wales and the Welsh county and county borough councils are contained in the final report of the Welsh Church Commissioners which was issued in 1948 and are as follows :

Authority	*Net Amount Received*
	£
Monmouth	340,631
Glamorgan	291,150
Denbigh	259,917
Pembroke	229,576
Anglesey	221,983
Montgomery	198,291
Caernarvon	164,263
Carmarthen	130,209
Merthyr Tydfil	124,924
Flint	105,159
	£2,066,103
Brecon	138,732
Radnor	120,787
Cardigan	85,771
Merioneth	38,200
Cardiff	10,719
Newport	3,267
Swansea	3,038
University of Wales	989,197
	£3,455,814

APPLICATION OF FUNDS

Section 19 of the 1914 Act imposed the following conditions upon county and county boroughs as to the application of their shares of the fund:

(*a*) The funds were to be applied in accordance with a scheme approved by the Secretary of State.

(*b*) The funds had to be applied " to charitable or eleemosynary purposes of local or general utility including the aiding of poor scholars."

(*c*) In framing any scheme for the application of such funds due regard had to be given " to the wants and circumstances of the parish in which the property is situated or from which it has been derived."

A scheme might provide that the local authority, after meeting the cost of the administration and management of the property and investments, should apply the funds to the following purposes:

(*a*) Scholarships.

(*b*) Encouraging Welsh art and literature.

(*c*) Establishment, maintenance and equipment of playing fields, parks, open spaces, local centres, institutes and social or educational organizations.

(*d*) The protection of historic buildings.

(*e*) Advancing the theory and practice of medicine.

(*f*) Grants for the assistance of persons on probation, discharged prisoners and children from approved schools and remand homes.

(*g*) Welfare of the blind.

(*h*) Welfare of the aged.

(*i*) Contributions towards restoration and maintenance of certain burial grounds.

(*j*) Contributing to voluntary charitable or eleemosynary organizations, the purposes of which are not inconsistent with the provisions of the scheme or with the Acts.

In some instances a particular authority has decided that the funds available shall be applied as far as possible towards objects which do not come within the scope of the council's statutory powers and that applications will only be considered from persons residing within the administrative county.

LOCAL UTILIZATION OF WELSH CHURCH FUND

The following figures taken from the latest published accounts of some Welsh counties and county boroughs are not without interest:

Authority	*Annual Expenditure*			*Annual Income*	*Amount of Fund*
	Grants	*Administration*	*Total*		
	£	£	£	£	£
Monmouth	8,351	1,631	9,982	11,608	402,429
Glamorgan	5,308	1,709	7,017	12,548	367,992
Denbigh	587	1,033	1,620	9,404	323,364
Pembroke	5,105	168	5,273	7,189	266,377
Anglesey	5,162	525	5,687	7,050	252,157
Montgomeryshire	2,981	313	3,294	7,869	242,006
Caernarvonshire	2,720	7	2,727	4,778	184,543
Carmarthenshire	3,649	392	4,041	4,499	155,173
Merthyr Tydfil	2,390	1,912	4,302	8,717	185,463
Flint	3,040	246	3,286	3,541	122,992
Totals	39,293			77,203	2,502,496

THE FUTURE

What is to happen to the large—and still growing—funds held by most of the local authorities ?

Since 1914 there have been sweeping changes in the powers of county and county borough councils, and the welfare state has been brought into existence: correspondingly the field of " charitable or eleemosynary purposes " has contracted. In these circumstances councils have undoubtedly not found it easy to utilize income completely in making donations to worthy causes or objects outside those where rate funds can be called in aid, and surpluses of undistributed income have accumulated. Nevertheless some notable gifts have been made, for example, towards the establishment of the Welsh Folk Museum at St. Fagans, Glamorgan, to the National Library of Wales, and to Llandaff (Cardiff) Cathedral, while numbers of individuals have received aid for approved purposes.

The University group divided their share as to one-eighth each to the University and the National Library, and as to three-sixteenths each to the four constituent colleges of the University. The colleges, moreover, agreed that their share should be devoted to new purposes connected with student welfare, whether by the building of halls of residence for men, the assisting of existing halls of residences for women, or by grants in aid of students, or otherwise in the general interest of student welfare. The University decided to earmark a substantial portion of its share to the Welsh National School of Medicine.

So long ago as 1940 the late Ifor Evans, M.A., then Principal of the University College of Wales, Aberystwyth, suggested that the local authorities should act in common and establish a Welsh National Trust which would act in the interests of Wales as a whole and submit schemes framed accordingly for approval to the Home Secretary (and now Minister for Welsh Affairs). This suggestion was not taken up.

We can envisage other ideas, for instance, that the financial straits of the Church should be recognized and the money, or at

any rate part of it, returned to its source: alternatively that because of the changed circumstances of the present day it should be applied forthwith, or over a period of years, in relief of rates.

Neither of these proposals would be likely to secure acceptance but personally we believe that the acknowledged good sense and shrewdness of the leaders and members of the Welsh local authorities will ensure that the money goes to worthwhile purposes. It will not be wasted or frittered away, and as has already been indicated, any national project soundly conceived and of benefit to the Welsh nation will receive adequate support: the very fact that some money is now being retained may at the appropriate moment enable a really striking contribution to be made. The local authorities are not prepared to give up their local autonomy but in practice will travel a considerable distance along the road signposted by Principal Evans.

WELFARE CONFERENCE

A welfare conference arranged by the County Councils Association, the Association of Municipal Corporations and the London County Council was held in London on February 24 and 25. At the first session, when the chair was taken by Miss M. O'Connor, O.B.E., chairman of the children and welfare committee of the County Councils Association, a paper was submitted by Dr. Hugh Paul, M.D., B.Ch., D.P.H., medical officer of health of Smethwick, on "Co-ordination of health and welfare functions of a local authority." He argued that the aim of welfare services departments should be self-destruction. But he admitted that the problem of rendering unnecessary most of the welfare work in the community, is considerably more difficult than that of abolishing infectious diseases, particularly when thinking of the aged. He thought integration was better than co-ordination and expressed the view that there is a great advantage in all the welfare services of the local authority being placed under the health committee with the medical officer of health as the responsible officer. He admitted, however, that this view has only been accepted by a few authorities, the large proportion of whom are satisfied that it is better to have two departments. The conference showed little support for his views. His main argument was that an intelligent welfare officer without a medical qualification will always be handicapped by his lack of medical knowledge—again he was clearly in a minority in expressing these views and most of those who took part in the discussion considered that it is unnecessary to use a medical man on purely welfare duties.

Dr. Paul thought it was the duty of welfare officers to assist the elderly and others who are threatened with exclusion from occupation but did not say whether this meant the actual finding of jobs or of co-operating with the Ministry of Labour through the employment exchanges, which is the general channel for filling vacancies in industry. Finally, he suggested that more power and responsibilities in the welfare of the elderly should be given to health visitors.

HOMELESS FAMILIES

The second session was devoted to the consideration of three papers on "Homeless families with particular reference to problem families." So much has been written and said on this subject in recent months that it could hardly have been expected that much new light could be thrown on the subject. Miss E. Stephenson, chief nursing officer of Newcastle upon Tyne, dealt with the "Prevention of problem families" and urged the need for the health visitor being used to a greater extent. Mrs. Nan Ross, gave an interesting practical account of her experience as the social worker at a centre for homeless families provided by the Kent county council, where accommodation is provided in 34 furnished flats but is limited to three months for any one family. The matter was considered from another angle in a paper by Mrs. P. E. Steed, home help organizer at Leicester. Unlike those who considered the health visitor to be the key person to deal with the prevention of families becoming a problem, she suggested that the best local authority official for this work was the home help. Clearly in Leicester the duties of the home helps cover a wider scope than is usual. They seem to be akin to home counsellors such as by helping the young mother even where there are difficult relationships with her own mother and to the extent of also advising the husband. The experience in Leicester shows that the limited use of home helps for preventive work before a family becomes a "problem" is worth exploring and developing elsewhere.

CO-OPERATION BETWEEN VOLUNTARY ORGANIZATIONS AND LOCAL AUTHORITIES

At the third session the chair was taken by Councillor Eric E. Mole, J.P. (chairman of the welfare committee of the Association of Municipal Corporations) when a useful and interesting address was given by Mr. G. E. Haynes, C.B.E. (general secretary of the National Council of Social Services).

He said 10 years ago there was a general feeling that the scope of voluntary effort would decline. But the new legislation gave a definite role to the voluntary organizations in the development of the services to be provided under the welfare state. He said local authorities generally were willing to co-operate with voluntary organizations but he stressed the view that voluntary effort can never be a substitute for State effort. Unlike public authorities, no legal obligation is imposed on voluntary organizations which enables the retention of a variety of effort in the movement. Their work rests on the genuine interest of local people who have no definite obligations except the showing of goodwill to their fellow men. He was, however, concerned that the standard of voluntary effort should be maintained. One of the main difficulties of voluntary organizations is uncertainty as to their future income. But more voluntary organizations are being formed than ever before. On co-operation with the statutory bodies, he said that on the whole this is excellent. They often, however, have to look to the local authorities for financial support and he thought then the voluntary organization would be as free as possible to do their work but they on the other hand must realize their responsibility to use the money properly. If the local authority accepted the service of a voluntary organization it should take a constructive interest in their work. The local authority should not attempt to control a voluntary organization and he was sceptical when the local authority tried to co-ordinate voluntary effort. He then went on to describe the help which can be given in various fields and especially in the helping of the handicapped, the homeless and the aged. Subsequent speakers showed a general appreciation of Mr. Haynes' views and urged the need for an even greater measure of voluntary effort being available to help the local authorities. The question of finance was discussed and one speaker suggested that there should be some arrangement whereby the expenses of voluntary workers might be paid.

CARE OF THE HANDICAPPED

Miss O'Connor contributed a paper on this subject, which contained a very useful summary of the statutory position and showed that those concerned are divided amongst the blind and partially sighted; the deaf; the hard of hearing; and other classes of handicapped persons. She emphasized the value of collaboration between the local authority and voluntary bodies. As to the deaf, she suggested that it is essential that any staff engaged in their welfare should be competent in the various means of communication. In this connexion she stressed the particular handicap of deaf children. Those local authorities who have arrangements for the welfare of the handicapped must maintain a register of them but apparently in some areas there has been a reluctance to register. Most of the voluntary bodies tend to cater only for one particular class of physical disability and Miss O'Connor expressed the opinion that herein lies a real danger of overlapping and wasted effort. She suggested that the government departments concerned might compile and publish a list of all the various statutory bodies and voluntary organizations providing services for the handicapped. Miss O'Connor mentioned that in Denmark there is a scheme for disabled children and others up to the age of 30 years and the courts have power to require action to be taken to prevent invalidism in the case of children up to the age of 18.

In the last part of her paper she gave a most useful summary of the various ways in which the social needs of the handicapped may be met and as to the provision of employment or occupational interests for them. She mentioned the special difficulty of the adolescent who leaves school at 16 but who cannot be accepted into a training centre until he is 18. On employment generally, she emphasized that for those able to travel reasonable distances, even in wheeled chairs, employment in open industry is the most satisfactory and here the disablement resettlement officers of the Ministry of Labour and National Service have a vital part to play. As to future developments, she urged that the danger against which welfare authorities will have to guard is that of dissipating their resources in an attempt to provide welfare services for every imaginable kind of physical handicap, no matter what its degree of severity. She thought there should be a new category of home teachers—a home teacher for the handicapped—whose task would be to provide home teaching not only for the blind but also for persons suffering from other types of handicap, both physical and mental. In making what may well be described as a very sensible, if controversial suggestion, she was evidently taking a long view and one which might ultimately be adopted without detriment to the blind and to the advantage of those suffering from other handicaps. There is too much danger of creating " watertight " departments in all fields of social welfare and this may be one way in which this can and should be avoided before it is too late. Serious consideration should be given also to her other suggestion, that there might be introduced into the local welfare services a new grade of " general purpose " social worker, who would not be required to possess social academic qualifications.

ADDRESS BY THE MINISTER OF HEALTH

The conference concluded with an address by the Rt. Hon. Ian MacLeod, M.P., Minister of Health. He expressed his pleasure that the conference had been arranged and commended the papers which had been considered and the address by Mr. Haynes which he thought was a specially good feature of the proceedings as in his opinion co-operation between local authorities and voluntary organizations in the field of social welfare is essential. In thinking of problem families the aim must be prevention and in this there must be a pooling of all the kinds of assistance which are available and the utmost use must be made of the various local authority domiciliary services. He commended an arrangement in one area where a health visitor had been specially selected to deal with problem families. It was then her duty to call in other specialist social workers who could help to build up proper family relationships between the members of the family. He stressed that it was essential in the various spheres of social welfare in each locality that the workers should know each other to know what each could do. This was specially necessary if there was a separate welfare and health committee. Turning to old people's welfare, he said the number of persons for whom residential accommodation was being provided by local authorities was 69,285 at the end of 1954, which was 3,352 more than at the end of the previous year. He then referred to the problem of the mentally sick and asked local authorities when considering the provision of homes for old people to provide some accommodation for old people now in mental hospitals who need not be there and for whom accommodation in local authority homes was quite suitable to supplement the provision which is being made in annexes at or near to mental hospitals. He hoped local authorities would also make special provision for the more infirm old people and suggested that homes should be provided for this purpose to accommodate up to about 60 persons but still retaining the smaller homes in accordance with the general policy which has been found to be so satisfactory. On the provision of welfare services for the handicapped, he regretted that less than 100 local authorities had made schemes for this provision and hoped that within the next two years such schemes would have been made by local authorities generally throughout the country.

MISCELLANEOUS INFORMATION

LAW SOCIETY FINAL EXAMINATION

[We are indebted to the Law Society for permission to reprint the following questions for the final examination, as set on Wednesday, March 16, 1955 (2.30 *p.m.* to 5.30 *p.m.*)—*Ed., J.P. and L.G.R.*]

A(1)—THE PRACTICE OF MAGISTRATES' COURTS, INCLUDING INDICTABLE AND SUMMARY OFFENCES; MATRIMONIAL JURISDICTION, BASTARDY, JUVENILE COURTS, TREATMENT OF OFFENDERS, CIVIL JURISDICTION, COLLECTING OFFICERS' DUTIES, THE ISSUE OF PROCESS, EVIDENCE IN CRIMINAL CASES, AND LICENSING.

(*Questions* *1, *2 *and* *3 *are compulsory.*)

*1. Draw a bastardy order, using imaginary particulars.

*2. X has been committed for trial to quarter sessions on charges of embezzlement. The prosecution has been conducted by Mr. A as solicitor for X's employers. The examining justice orders payment out of local funds of £10 10s. in respect of Mr. A's costs. What procedure is followed to enable Mr. A to receive this amount?

*3. In what circumstances can a magistrates' court on inflicting a fine and ordering payment by instalments, impose a term of imprisonment, on the same occasion, in default of payment?

(*Attempt seven and no more of the remaining questions.*)

4. B appears before a magistrates' court, charged with driving a motor vehicle in a manner dangerous to the public. The prosecutor desires that the case be tried summarily. On summary conviction B is liable to a fine not exceeding £50 or imprisonment not exceeding four months. How should B be addressed by the court before being asked to plead?

5. Mrs. Jones applies for a separation order against her husband on the ground of his adultery with Miss Roberts. The complaint is denied. As her sole witness, Mrs. Jones calls Miss Roberts who gives evidence of acts of adultery between herself and the defendant. The defendant denies this evidence on oath. What advice would you give to the justices regarding the principles that should be observed in deciding upon the complaint?

6. A juvenile court has decided to commit William to an approved school. The magistrates desire to send him to a school at X which is known to them. The court has been notified of the availability of a classifying school at Y for which William is eligible. Advise the justices whether they may commit William direct to the school at X.

7. The K.L. Brewery Company desires to obtain a publican's licence. In the same licensing district, the company owns a beerhouse. They seek your advice and inquire whether the monopoly value payable in respect of the proposed new licence would be modified if the beerhouse licence were surrendered. Advise them.

8. Hopkins is charged before your justices with receiving a watch knowing it to have been stolen. He denies the charge. In what circumstances may the justices be informed of any previous convictions recorded against him?

9. Mary, when a spinster, gives birth to a child Robert, the putative father of whom is James, a married man. James maintains the child until he is three years of age and then, having been divorced, marries Mary. Mary subsequently leaves James and a summons taken out by her against him on a complaint of desertion is dismissed, the justices holding that Mary has deserted her husband. She now desires to obtain maintenance from James in respect of Robert. Advise her.

10. Herbert, aged nine years, appears before your juvenile court, on charges of larceny. In view of his previous offences, the justices are considering sending him to an approved school. What advice would you give to them?

11. Your justices have committed a man to quarter sessions. One of the witnesses resides about 100 miles from the court of trial. As his evidence appeared to be merely formal, he was conditionally bound over. On the day before quarter sessions, the defendant's solicitor informs you that he desires the witness to attend at the trial. What action would you take?

12. Robinson is the owner of a piece of land in the county borough of Z. The local planning authority has served a notice upon him under s. 23 of the Town and Country Planning Act, 1947, alleging that he has developed the land without legal authority. What steps may Robinson take to dispute the notice and what procedure may the local planning authority adopt if he takes no action?

A(3)—Local Government Law and Practice.

(*Questions* *1, *2 *and* *3 *are compulsory.*)

*1. The Transport Commission are promoting a Bill in Parliament to allow them to close Mudhampton Canal, which they are under a statutory duty to maintain. The Mudhampton corporation and the Haybury rural district council wish to oppose this, on the grounds that their areas will be injuriously affected. How can they do this?

*2. The Loamshire standing joint committee resolve: (*a*) to increase the number of policemen in their force. (*b*) To build a new station on a particular site. The owner is unwilling to sell. The Loamshire county council refuse to provide the pay for the additional policemen or to make a compulsory purchase order, on the ground that both are unnecessary. Discuss the position.

*3. What persons or bodies can be highway authorities, and for what highways are they severally responsible?

(*Attempt seven and no more of the remaining questions.*)

4. At a recent election for a seat on the Barchester city council, Proudie was a candidate, and was successful. An election petition was lodged and the following facts were proved: (*a*) Adam, one of Proudie's supporters, personated Seth, without the knowledge of Proudie or his agent. (*b*) Cain, another of his supporters, treated several electors. Proudie was not aware of this, but Grantley, his election agent, was. (*c*) No return of election expenses was made as required by law. What is the effect of these findings on Proudie?

5. Your client John recently bought a dwelling-house in the county borough of Mudhampton, intending to enlarge it and use it as a proprietary home for disabled persons. The corporation have refused to grant him byelaw approval, planning permission, or registration under the National Assistance Act, 1948, and have now made a demolition order. John wishes to appeal. Advise him.

6. Robert, clerk of the peace and of the county council for Loamshire since 1929, is retiring. How will his successor be appointed?

7. How are the accounts of a borough audited? Can the borough council change the method?

8. William, a sanitary inspector of the Muddleham urban district, enters George's butcher's shop and sees on the counter a piece of meat which is obviously unfit for human consumption. What action can he take? What defences are open to George?

9. A member of the Loamshire county council submits to the clerk a notice that at the next meeting of the council he will move the following resolution—"That the conduct of the county surveyor in receiving bribes from contractors is reprehensible, and that he be dismissed forthwith." The clerk, in accordance with standing orders, enters the notice on the agenda for the next meeting, and circulates it to all members, and in accordance with the usual practice, sends a copy of the agenda to the *Loamton Gazette*. There is no truth in the allegation. Can the county surveyor sue the clerk of the council for libel?

10. Who has power to light a highway in a rural district?

11. In what cases must, and in what cases may, a parish council be established, and by whom?

12. What are the powers of an education committee of a county council?

BURY JUVENILE COURT

Unlike most recent reports on the work of juvenile courts, the report of Mr. Robert Bradshaw, chairman of the Bury borough juvenile court panel, records a slight increase in the number of cases before the court in 1954 as compared with 1953. Mr. Bradshaw is puzzled to know why the decline in juvenile delinquency that has taken place in most parts of the country is not to be found in Bury, especially as there was a progressive reduction after the war years until 1952.

"Whilst it is good to know that the act of wilfully breaking and entering private property has declined it seems to me inexplicable that young children should deliberately steal—either money or goods—when the general conditions of the country are so good that the ordinary day-to-day requirements of children can be afforded and honourably paid for by the parents. Indeed my records show that the available income in these homes is of a very substantial character and it is exceptional to find a family in really poor financial circumstances. Poverty, therefore, cannot be accepted as a root cause of delinquency and we must probe much deeper into our problem for an explanation."

Mr. Bradshaw suggests the probable answer. There is in the borough a demand for labour beyond what is available, and mothers are going out to work. He rightly lays upon all parents the responsibility for looking after their children, and holds that national prosperity and full employment ought not to become a cause of juvenile crime. "Unfortunately," he says, "it is the gross neglect by the parents of their children which is the most disturbing feature of my report." During the year 1954, 22 parents were bound over for the good behaviour of their children and it had not been necessary, at the time when the report was written, to estreat a recognizance.

The fact that offences by juveniles in connexion with the driving of motor vehicles show a high increase in number is serious for, as the report points out, many of these offences automatically involve driving without insurance cover and the consequences of an accident may be much aggravated.

COUNTY BOROUGH OF EASTBOURNE—CHIEF CONSTABLE'S REPORT FOR 1954

This is the present chief constable's first annual report. He was formerly chief constable of Dewsbury. His force has an authorized establishment of 127. Its actual strength on December 31, 1954, was 122. He observes that probably owing to the climate and amenities of the district, and the good reputation enjoyed by the force, many applications have in recent years been received by men wishing to transfer from other forces. Of 73 who have joined since the war, no fewer than 20 had previously served elsewhere in the United Kingdom. Moreover, during 1954, applications were received from policemen serving in Bermuda and in the Irish Free State.

There are at present three police cadets. Nine others have served in Eastbourne since 1946, and of these, three joined the force on completing national service (one has since transferred to the metropolitan police), two others, not tall enough for the Eastbourne force, applied to join the metropolitan police and four are still on national service. On the question of height we note that the average height of the force is 5 *ft.* 11·7 *in.*

Under the heading "training" it is noted that conferences on criminal investigation, traffic, photography and training were attended during the year by specialist members of the force, and it is considered that they benefit considerably from such opportunities for exchanging ideas with their opposite numbers elsewhere.

A paragraph is devoted to "Relations with Public and Press." There is a very good feeling between police and public in Eastbourne, but the chief constable considers that the police could serve the public even better if the latter knew more about police resources and appreciated more fully the need for prompt information. In this connexion the details given later in the report of three interesting cases during the year illustrate vividly the truth of what the chief constable says. In one of these cases a house at Shoreham was broken into in the early morning and a post office book was stolen. Eastbourne police were warned, and the particulars of the book were circulated to all post offices. At 10.30 *a.m.* a sub post-master informed police that the book was being presented by a young man who wanted to withdraw £3. A wireless car was directed to the post office and arrived

while the man was completing the withdrawal form. He admitted the offence at Shoreham and 494 other crimes. He had no previous convictions and he could not, therefore, be traced by finger prints left at the scene of any of his many crimes.

The special constables are praised for their good work and keenness. They are being reorganized into three sections with the object of promoting a competitive spirit and friendly rivalry which should lead to even greater efficiency.

Crime detection during 1954 was 62·27 *per cent.*—416 out of 668 recorded crimes. This figure of 668 showed a decrease of 88 over the 1953 figure of 756. Cycle stealing is fairly persistent in Eastbourne, the figures for the years 1950 to 1954 being 30, 21, 38, 26 and 28. During 1954, 33 other complaints were received, but in these cases the machines were later recovered and returned to their owners. Eighty juveniles were brought before the juvenile court in 1954, those aged 14, 15 and 16 years accounting for 12, 15 and 18, respectively, of this total.

There was an increase from 367 to 533 in the number of persons summoned for non-indictable offences, the increase being due largely to the number of persons summoned and convicted for pedestrian crossing offences and for parking in Carlisle Road. On the subject of "parking" the report records that the problem is becoming annually more acute, and the motoring public are urged to avoid main traffic areas, particularly Terminus Road, except when calling at shops and business premises. This applies especially to peak traffic times.

There were very few cases of drunkenness (22) during 1954; the figure for 1953 was 34. But five persons were prosecuted for offences against s. 15 of the Road Traffic Act, 1930, and of these four were convicted and one, who was tried at quarter sessions, was acquitted.

An interesting side light on police activities is the use of police public address equipment for tracing visitors to Eastbourne who were urgently required in their home towns.

PREVENTING BREAK-UP OF FAMILIES

During recent months it has been urged at conferences and otherwise that more should be done to prevent the breaking-up of families which sometimes results from children being taken into the care of local authorities. Magistrates and others concerned with this problem will therefore welcome the issue of a circular by the Ministry of Health to county councils and county borough councils in which the Minister shows his concern at the bad effects on the health, especially the mental health, of children which often follow the break-up of the family. As he points out, some local authorities are increasingly using their domiciliary services to help in keeping the family together and he draws the attention of all local health authorities to the importance of developing this side of their preventive work. Family difficulties frequently originate in the illness or infirmity, often of a temporary character, of a parent or a guardian. In such cases and particularly when the mother is ill, the local health authority may be able to assist the family in such a way that the children can continue to live at home, *e.g.*, by the provision of domestic help or, where the father is on night work, by sitters-in at night. Many authorities already use their services under ss. 28 or 29 of the National Health Service Act, 1946, for this purpose, and the Minister wishes all authorities to consider whether more should be done in this way. It is stressed in the circular that children in the "problem families," where one or both parents are often handicapped by physical ill-health or of a low intelligence or suffering from mental instability, are peculiarly exposed to physical neglect and risk of mental illness such as psychological disturbance and retarded mental development. Problem families thus tend to reproduce themselves in the next generation and cost the community an expense out of all proportion to their numbers. Action to break this vicious circle by preventive measures would, in the Minister's view, be a proper exercise of the local health authorities' powers under s. 28 of the National Health Service Act, 1946. It is suggested that the health visitor whose work now extends to cover the whole field of prevention of ill-health, including prevention of mental ill-health, is by reason of her contact with families with young children particularly well placed to recognize the early signs of failure in the family which may lead to the disruption of normal home life with consequent risk to the mental health of the children. Often she can, from her own training and experience, offer advice which will enable the family to overcome these difficulties: at other times she may need to call in other officers of the local authority, *e.g.*, the mental health worker or home help. There are also many voluntary organizations with workers accustomed to dealing with matters of family welfare or with problem families, whose co-operation may be sought. It may well be that some local health authorities will find there is need to employ a trained social case worker, who might be one already engaged in similar work, under other powers, in order that the particular needs of such families may be studied and met in appropriate ways. The provision of a specially selected home help to work with the mother, to teach her housecraft, is meeting with success in one or two areas where it is being tried and the use of special convalescent and re-training facilities for this type of mother has a limited but valuable application. But it is important that, notwithstanding that other help may have been called in, the health visitor should not regard her responsibilities as at an end before a solution has been found. In order that the health visitor may use her influence at the most propitious time it is essential that she should receive information from other health or welfare workers of any signs of family difficulty or deterioration. Such information may come, for instance, from the family doctor or the home nurse or hospital or school, and local authorities should make such arrangements as seems to them desirable for the information to be given to the health visitor. It has been urged previously that in such matters the welfare authority should keep in touch with the housing authority and it is useful therefore that it is definitely advised in the circular that the health visitor should maintain also a close liaison with the housing managers employed by housing authorities who often become aware of difficulties at an early stage.

The Minister believes that much can be done within the existing framework of the authorities' approved proposals under the Act, but where any amendment of these proposals is necessary to take action for the purposes indicated in the circular, he will be ready to give sympathetic consideration to approving them. In so far as an expansion of services is necessary the Minister wishes authorities to regard this suggestion not as designed to entail additional expense, but as an overall economy to public funds. He hopes that on this basis authorities will consider what further steps they can usefully take in this direction to bring about economy.

EDUCATION IN LONDON 1945-54

This informative report by Dr. John Brown, education officer to the London County Council, covers the first nine years of post-war planning, rebuilding and achievement in the London education service. The period starts with the rehabilitation or replacement of war damaged schools and ends with the county council launched on the adventure of the comprehensive experiment. In future triennial reports will be made, so that the current one is a document of some historical importance. The period covers the post-war bulge in the birth-rate which, coupled with the reorganization dictated by the Education Act, 1944, made such heavy demands on primary school accommodation and teachers and which is now advancing on the secondary schools.

An interesting chapter entitled "Recruiting the Staff" describes the measures taken since the war to recruit teachers, including the work of the emergency training colleges. In October, 1951, a revised scheme of government for the council's training colleges was introduced to meet their new position as constituent colleges of the University of London Institute of Education, to which they had been affiliated when it was reorganized in 1948 and when an area training scheme for London was set up. Under this scheme the university assumed responsibility for the oversight of the training of teachers in the area. The Institute of Education is responsible for the supervision of courses, for recommending the Minister to grant the status of qualified teachers to students who successfully complete the courses, and for providing facilities for discussion or research.

Changes in nomenclature are always interesting; thus the old "school board man" has gone through the chrysalis stage of "school attendance officer" and finally emerged as the "school inquiry officer." His concern, as the report states, is now more the general welfare of the children than merely ensuring their attendance at school.

In a short chapter entitled "Secondary Education for All" the council's decision to implement the provisions of the Act relating to secondary education largely by means of the comprehensive school is explained. It is reassuring to read that the voluntary schools will continue, as they have sometimes been attacked by the ignorant. The council's present intention is to supplement their provision by building schools somewhat smaller in size than the more fully comprehensive schools; these are known as "county complements" to the voluntary-aided grammar schools.

Owing to the pressing need for extra primary provision the actual building of comprehensive schools had to be deferred for some years and this may eventually prove to have been a blessing in disguise! The first to be completed, Kidbrooke Secondary Girls' School, was completed in July, 1954, but its actual opening last September falls outside the period covered by the report. Two more comprehensive schools are to opened in 1955: Woodberry Down Secondary Mixed School in North East London and Holloway Secondary Boys' School in North London.

The initial post-war scheme of transfer from primary to secondary schools in London is described in a chapter on "Some Further Effects of the Act." At first the council's common entrance tests comprised papers in English, arithmetic and general knowledge, but in 1950 the

latter was replaced by a standardized intelligence test and a supplementary intelligence test has been taken each September since 1952. The final assessment for each child is made by a local committee consisting of representatives of teachers and the district inspector. The parent has the right of appeal to the committee and the scheme has been modified this year. Thus the actual test is now known as the junior leaving examination and information on each child is collated more scientifically. It should be borne in mind that there is a distinct tendency towards the abolition of any examination at all at what is regarded as an early age. With the advent of comprehensive schools and the development of technical schools a much wider range of courses is theoretically provided, and the examination result may not be so significant in a number of cases. Nevertheless, it is the writer's opinion that competition will still be keen for places in the voluntary-aided grammar schools and to a lesser extent in the county grammar schools.

Many other activities of the London education service are briefly and lucidly described: for example, provision for boarding education and for handicapped children, school journeys and camps and playing fields: it is encouraging to read that schools have been able to secure expert coaching in cricket and football through the co-operation of the Middlesex C.C.C. and the F.A. In addition, the F.A., the Middlesex and Surrey C.C.Cs. and the L.T.A. have given valuable help in the training of teachers. The council's work concerning play centres and junior clubs is worthy of mention. Play centres were originally conducted by a voluntary organization but were eventually taken over by the council during the war.

Finally mention should be made of the council's great work in the sphere of further education. Polytechnics, colleges of commerce, law and languages, technical colleges, art schools and recreational institutes all flourish in the London education service. Their work is adequately described in a fascinating chapter on "Training for Industry and Commerce." The catholicity of technical instruction available in the great metropolis is exemplified by the organization of a correspondence course for apprentice-engineers at sea by the Poplar Technical College, in conjunction with the South Shields Marine and Technical College.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 29.

A SUCCESSFUL PROSECUTION UNDER THE RIVERS (PREVENTION OF POLLUTION) ACT, 1951

Before the Faversham (Kent) magistrates' court on March 23 last a company appeared to answer charges laid by the Kent River Board under s. 7 (1) of the Rivers (Prevention of Pollution) Act, 1951, of (1) bringing into use a new or altered outlet for the discharge of trade effluent and sewage effluent to a stream, without the consent of the river board, and (2) beginning to make a new discharge of trade effluent and sewage effluent to a stream, without the consent of the river board. The company pleaded guilty to both charges.

For the board, it was stated that the company had a fruit and vegetable canning factory and that they were a subsidiary of a well-known company engaged in that form of business. At the end of 1952 an inspector of the board visited the factory and was satisfied that both trade and sewage effluents were disposed of otherwise than by discharge to a stream. At the beginning of this year the board had a complaint of pollution of a stream and watercress beds near the factory. As a result, the board's chief inspector for rivers pollution prevention and fisheries visited the factory and found that it had been extended and that a new sewage treatment plant had been constructed, the effluent from which was being discharged to an ineffective " soakaway " and thence through a new outfall pipe to a field ditch: the flow in the field ditch was directed ultimately to the stream which fed the watercress beds. The prosecution claimed that in this case the ditch was the " stream." The " soakaway " also received the drainage from a yard in which were washed barrels which had contained apple pulp or some similar material. The company admitted that the discharge of effluent through the outlet had started within the previous three months. Analysis of samples indicated that the trade effluent in the form of barrel washing drainage, and the sewage effluent, were both of unsatisfactory quality.

The prosecutor told the court that upon the matter being brought to the notice of the company the latter had at once put in hand arrangements for pumping the sewage effluent and the barrel washing drainage to the local authority's sewers, which were already receiving the trade waste from the canning processes at the factory.

In mitigation of the offences, the solicitor representing the defendant company said that they had engaged architects to design the treatment plant and had left it to them to obtain all necessary approvals and consents and that the architects, having obtained the approval of the local authority, had not realized that any other approval was required. The company had spent £6,000 on constructing the treatment plant, which would now be entirely superfluous; they were having to spend more money on installing a pump; and they were faced with a claim by the owner of the watercress beds. Their solicitor therefore suggested that the bench might think the defendants had suffered sufficient punishment for their failure to comply with s. 7 (1) of the Act.

The chairman said that, although it was the first case of its kind in the county, the court did not think it could be overlooked. The defendants were fined £10 on each charge and ordered to pay £5 5*s*. costs.

COMMENT

Mr. A. G. Stirk, clerk to the Kent River Board, to whom the writer is greatly indebted for this report, suggests in a covering letter that reference should be made to the great importance which river boards attach to s. 7 of the Act of 1951, which affords them the means of preventing the creation of new sources of pollution. In subs. (8) of the section, wide definitions are given to the expressions " new or altered outlet " and " new discharge." The definitions are sufficiently wide to enable river boards to strike at those who, often for their own selfish purposes, do not hesitate to pollute waters previously enjoyed by the public.

In s. 11 of the Act the word " stream " is defined as including any river, stream, watercourse or inland water whether natural or artificial, excluding lakes or ponds which do not discharge to a stream, sewers vested in a local authority, and tidal waters. The definition provides, however, that references to a stream include a reference to the channel or bed of a stream which is for the time being dry.

By s. 7 (13) of the Act offenders may be punished on summary conviction with a fine of £50. R.L.H.

No. 30.

A COAL MERCHANT HEAVILY FINED

A local coal merchant appeared at Dorchester magistrates' court on March 28 last charged with applying a false trade description to goods, contrary to s. 2 of the Merchandise Marks Act, 1887.

For the prosecution it was stated that a customer ordered two *tons* of anthracite cobbles from the defendant. Two *cwt*. of coal described as anthracite cobbles was delivered in September last and a further delivery of two *tons* 10½ *cwt*. was made at a later date. The coal was charged for at the price of best quality anthracite cobbles.

In November the customer commenced using the coal and found that not only did it contain a great deal of slack but also that it did not burn away to form the usual anthracite ash. She complained and defendant called to see the fuel and agreed that the amount of slack was unreasonable and said that he would make an allowance for it. Defendant said he could not help the quality of the coal as it was that supplied by the National Coal Board.

In January of this year the customer, who was dissatisfied, complained to the local district inspector for weights and measures who examined the coal, and who thought that the proper description for it was " nutty slack." A sample was sent to the analyst who reported that it was dry steam coal. The coal that remained from the delivery was sorted into slack and usable coal and it was found that some 6½ *cwt*., half of the amount, was slack.

In February, Mr. W. R. Breed, the chief inspector of weights and measures for Dorset, to whom the writer is indebted for this report, interviewed the defendant who said that he had not followed up the complaint about excessive slack with his office.

Mr. Breed later visited the only four pits in South Wales producing best quality anthracite and collected samples, and these were produced in court together with samples of the coal delivered by the defendant. It had been ascertained that anthracite cobbles were washed before grading and that it would take a minimum of 10 years to get 50 *per cent*. of dust and slack whilst in storage. These figures did not apply to dry steam coal. The scheduled retail price of best anthracite cobbles was 189*s*. 2*d*. per *ton* and that of dry steam cobbles 155*s*. 10*d*.

Inquiries had been made of the National Coal Board, said the prosecutor, and there was no record of the defendant having ever been supplied with the best anthracite cobbles.

For the defendant, who pleaded guilty, and who had been convicted in 1952 of supplying short weight and fined £5, and in 1953 fined a total of £15 for two similar offences, it was urged that a driver employed by him had mistaken which coal to take to the customer and had inadvertently taken steam coal in lieu of anthracite cobbles. At the material time there had been piles of both kinds in the yard. Steam coal and anthracite, urged the defence, both shared the quality of "brightness" and it was this factor which had misled the lorry driver.

The chairman, in fining the defendant £100 and ordering him to pay £35 costs, said "This is an entirely disgraceful case. There appear to be no redeeming features whatever. I think the authorities have done very well in putting the case so clearly and taking so much trouble in putting the evidence before us."

COMMENT

Readers will share the view of the court that the case reported above was a disgraceful one. It is all too easy for irregularities to occur in connexion with the delivery of coal, either as in this case on account of delivering a cheaper grade than the one paid for, or in the form of delivering short weight. The fuel is frequently delivered when no one is at home to receive it and in any event it is impossible for the ordinary householder to weigh fuel when it is delivered. In these circumstances the sharp fine imposed deserves wide publicity.

By s. 5 of the Act, adequate powers are given for the punishment of irregularities of the nature indicated above, for in the case of a first offence an offender on summary conviction may be sentenced to four months' imprisonment or fined £100 and in the case of a second or subsequent offence may be imprisoned for six months or fined £250. R.L.H.

PENALTIES

Monmouth—March, 1955. Failing to maintain wife and three children. Fined £50. Defendant, aged 35, left his family in 1952. The wife and children had to receive national assistance. It took 12 months to trace defendant.

Liverpool—March, 1955. Being responsible for the sale of a packet of quaker oats unfit for human consumption. Fined £5. Defendant company, the manufacturers, supplied the oats to a Liverpool grocer from whom they were bought by a housewife who found beetles in the porridge when she served it for breakfast. In the packet were larvae like hairy brown caterpillars and beetles about a quarter of an inch long.

Bishop Auckland—March, 1955. Causing unnecessary suffering to two calves and 13 head of poultry. Fined £25, to pay £12 12*s.* costs. Two bloodstained dogs were seen to rush from farm buildings late at night. In the buildings were found two dead calves, one of which had been partly eaten by the dogs. The poultry were roosting in a cart shed, unable to get out because of snow against the door. Defendant had left the farm.

Perth—March, 1955. Stealing a postal packet. One year's imprisonment. Defendant, a 59 year old postman, stole a packet containing £1,000. It was subsequently found in its original wrappings, buried a foot deep in defendant's garden.

Old Bailey—March, 1955. Demanding money with menaces—two defendants, each sentenced to two years' imprisonment. Defendants, police constables, aged 24 and 22 respectively, threatened a commercial traveller with a completely false charge of importuning.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

DAMAGES AND COMPENSATION IN THE JUVENILE COURT

To dissent from Mr. Wilson (*vide* 119 J.P.N. 174) is to do so with great respect.

It is impossible to deal with this matter both fully and briefly, but perhaps I may be allowed to make six points.

1. Surely the reason why special enforcement-procedure was provided by s. 11 (3) of the Criminal Justice Act, 1948, was to ensure that costs and compensation would not be enforced in different ways? Thus in the High Court, by virtue of s. 11 (3) civil debt-procedure applies; no doubt this would have been implied, but expression was better since a power to order costs was no longer contained in the same section. In indictable cases dealt with summarily, *where there was a conviction* there were (in the then state of the law) different views as to the procedure for recovering costs; *see, e.g.*, note in *Stone* (editions 1949 to 1951) to Costs in Criminal Cases Act, 1908, s. 6 (5) (not the current editor's own view) and contrast the note to Criminal Justice Act, 1948, s. 11 (3) (expressed generally, and, as to indictable cases, the current editor's personal view). Even assuming that costs would (in default of expression) be enforceable as a fine, it was wise to make clear that the Money Payments (J.P.) Act, 1935—*see* the reference to costs in the definition of "sum adjudged to be paid by a conviction"—would apply to compensation.

2. Section 126 (9) of the Magistrates' Courts Act, 1952, could apply, *e.g.*, to s. 109 where the words "instead of" are used, but since it is substantially a repetition of a new provision enacted by s. 80 (6) of the Criminal Justice Act, 1948 (applying to all courts and still in force) and since the latter Act contained a number of new powers expressed as "in lieu," it seems reasonable to suppose that the draftsman, in translating some of these powers to the Magistrates' Courts Act, 1952, *ex abundante cautela* translated this provision also. At any rate, the provision does not really affect the matter under inquiry, because it is not s. 21 (2) but s. 32 (expressed in quite general terms, and not an "authorizing" provision at all), which limits the amount of a "fine" in the case of a child.

3. Even before the Magistrates' Courts Act, 1952, a view was widely held that compensation ordered under the Forfeiture Act, 1870, was enforceable as a sum payable "under" or by a conviction; this is implicit in a note to s. 4 of the Protection of Animals Act, 1911, in the 1951 edition of *Stone* (and still current); it has actually been expressed (*semble* by the then editor of *Stone*) in the Justices' Clerks' Society's *Bulletin* for May, 1950. Now that the Magistrates' Courts Act, 1952, has made it clear that the compensation is enforceable "as a sum adjudged to be paid by a conviction," it seems quite unrealistic to contend that the sum is not payable "under" a conviction. If the choice of preposition means anything, surely "under" is wider (not narrower) than "by"?

4. Sections 10 (as substituted), 11, and 12 (before repeal) of the Summary Jurisdiction Act, 1879, and ss. 19, 20, and 21 of the Magistrates' Courts Act, 1952, create a power to impose a fine. Here, it is submitted, the context requires the interpretation of the term in its primary sense (Coke upon Littleton) of "making an end *with the King*." To incorporate the statutory definition would make no sense. There is, therefore, no reason in the case of a young person to suggest that compensation (with probation or similar order, or under the Forfeiture Act) is limited in amount by s. 20 of the Magistrates' Courts Act.

5. The provisions of s. 32 are all-embracing. They *now* include indictable cases. This section *limits* powers. There is no reason to exclude the statutory definition. Therefore, it is submitted, a magistrates' court finding a child guilty of any offence is limited in monetary award (of any description) to the total amount of 40*s.* plus costs.

6. In summary cases (to which, of course, the Forfeiture Act, 1870, has no application) a change in the law was, it is submitted, effected by the Criminal Justice Act, 1948, which made a probation order dependent upon a conviction, and thereby applied s. 15 of the Summary Jurisdiction Act, 1879, so as to limit the amount of compensation to £2 in the case of a child. In indictable cases, the change was effected by s. 32 of the Magistrates' Courts Act, 1952, which *limited the* power to "fine" in *all* cases (contrast s. 10 of the Act of 1879—as substituted—which *gave* a limited power to fine). If it be granted that it was the policy of the legislature to limit in the case of a child the amount of a fine (in the ordinary sense) to 40*s.*, leaving discretion as to costs, it does not seem altogether illogical that the limit should now apply to the total of *any* sums (other than costs) enforceable "as sums adjudged to be paid by the conviction." Whether the amount is adequate is of course a matter of opinion and policy.

Yours faithfully,
C. WHITE,
Clerk to the Justices, Stoke-on-Trent.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CLERKS TO JUSTICES AND COMMITTALS FOR TRIAL

Your correspondent under the above heading, Mr. P. A. Selborne Stringer, raised a nice point which must be of interest and concern to all county clerks to justices.

If it is to be inferred from the words, " Before the passing of the Justices of the Peace Act, 1949, and while clerks to the justices were employed by the justices," that they are now employees of the magistrates' courts committees, then the words of the Rt. Hon. Lord Lloyd (Under-Secretary of State for the Home Department), as reported in the December issue of *The Magistrate*, can have no meaning.

Lord Lloyd is reported to have said, amongst other things, " Another point is the relationship of the county committees with the justices' clerks. The committee appoints the clerks, but it does not employ them. Once a clerk is appointed he is the servant of his own bench, and Parliament recognized the importance of the relationship between clerk and bench by not making the magistrates' courts committee the employer. I think that a clear understanding of this by all concerned will go far to relieve the uneasiness which is, I know, felt by the clerks in some areas."

On a close examination of the Justices of the Peace Act, 1949, few will seek to disagree with the words of Lord Lloyd, and it is a matter of satisfaction that so many magistrates' courts committees throughout the country have not failed to recognize this important principle, and that thereby the complex problems arising out of the revolutionary changes have resolved themselves in most areas without undue difficulties, to the best advantages of an efficient administration of justice.

Yours faithfully,
FRED McWILLIAMS,
Clerk to the Justices.

Magistrates' Clerk's Office,
Cockton House,
Cockton Hill, Bishop Auckland.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PARKING ON GRASS VERGES

I read my friend Mr. Plinston's letter at p. 187 with interest. The modern version of a garden city known as a new town is being built in the borough of Hemel Hempstead; and the council have recently considered the need to protect the grass verges in the new streets. The Home Secretary will no longer allow a byelaw in the Letchworth form as he considers it essential that notices should be displayed. The model form of byelaw now is:

BYELAW

As to the preservation of road margins laid out for ornamental purposes.

1. No person shall without lawful authority drive or place a vehicle, or cause a vehicle to be driven or placed, upon any road margin to which this byelaw applies, in such a manner as to injure or to be likely to injure any turf or any tree, shrub or plant growing thereon.

Interpretation and extent of byelaw.

2. This byelaw applies to any road margin which is:

(i) in or beside a public road other than a trunk road vested in the Minister of Transport and Civil Aviation;

(ii) laid or sown with grass or planted with trees, shrubs or plants, and maintained constantly in good order for ornamental purposes; and

(iii) indicated to be a margin to which this byelaw applies by means of notices conspicuously displayed on or near the said margin by the . . . . council.

3. *Penalty.*

Yours faithfully,
C. W. KIRK,
Town Clerk.

Town Hall,
Hemel Hempstead.

PERSONALIA

APPOINTMENTS

Mr. Albert Marson has succeeded Mr. W. G. Bullock as clerk to Erpingham, Norfolk, rural district council. Mr. Marson was deputy clerk to Southwell, Notts., rural district council before moving to Sheringham, Norfolk, and previously held similar office with Lichfield, Staffs., rural district council. Mr. Bullock, whose retirement was announced in our issue of March 26, had served Erpingham council for 41 years.

Mr. Roland Ernest Woodward, deputy town clerk of Birkenhead, Cheshire, has been recommended for the position of deputy town clerk to Leicester city council. Mr. Woodward was admitted in December, 1938.

Mr. William Edward Watson, assistant chief constable of Newcastle upon Tyne, has been appointed chief constable of Stoke-on-Trent in succession to Mr. F. L. Bunn.

RETIREMENTS

Colonel H. C. C. Batten, solicitor, of Yeovil, will retire on June 30 from the office of part-time clerk to the justices for the Yeovil, Somt., petty sessional division, which he has held for the past 30 years. On the same date Mr. F. W. Willmott, solicitor, of Taunton, will retire from the office of part-time clerk to the Somerton, Somt., petty sessional division after holding the appointment for more than 23 years. Mr. Reginald Harold Harbour, now serving as first assistant in the justices' clerk's office, Yeovil, has been appointed to succeed Colonel Batten as from July 1, 1955, and Mr. Christopher J. Arrow, solicitor, of Yeovil, has been appointed to succeed Mr. Willmott as from the same date. Both appointments are subject to the approval of the Secretary of State.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Monday, April 4

CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS) BILL, read 3a.

ADDITIONS TO COMMISSIONS

KENT COUNTY

Reginald James Davie, 35, Wheatsheaf Gardens, Sheerness.
Walter Jack Somerton Dove, Whyte Lodge, Woolwich Road, Abbey Wood, S.E.2.
Mrs. Edna Laura Duff, Carinya, Wood Lane, Darenth.
Mrs. Winifred Mabel Godfrey, 14, Millstrood Road, Whitstable.
Lawrence Gray, Post Office Stores, Blue Bell Hill, nr. Rochester.
Stanley Henry Hassell, 22, Abbotsbury Road, Hayes, Bromley.

TOO PROVOKING

In comparison with the strong meat fed to previous generations, the theatrical fare served up to present-day playgoers is, on the whole, fairly insipid, except when it takes the form of a rehash—the doom-ridden tragedies of Aeschylus and Sophocles, the blood-and-thunder of Marlowe, Webster and the lesser Elizabethans, the Scandinavian gloom of Strindberg and Ibsen. Scarcely anything of the kind has been produced by English playwrights since James Elroy Flecker's *Hassan*, written before the First World War. Even the Victorians had their melodrama; but today the mantle of Mrs. Henry Wood has descended, not upon the Royal Academy of Dramatic Art, but upon Hollywood and Pinewood. The stock situations and characters of *East Lynne*, after the lapse of nearly a century, are still with us—somewhat disguised, it is true, but still recognizable—in celluloid. The heroine, nowadays, is less static, and bulges in slightly different places; the hero uses a straight left instead of a horsewhip, and the villain flourishes a six-shooter instead of twirling his moustaches and threatening to foreclose on the mortgage. But by and large the story is the same—shining innocence provoked by "Evil, be thou my Good"; jet black in conflict with purest white. Who can have any doubt of the ultimate issue, when Right and Wrong have neat little labels attached to them, printed in clear block capitals?

In the good old days when Henry Irving first played at the Lyceum—80 years and more ago—the action usually rose to a climax towards the end of the Second Act, in a scene which was greeted with rapturous applause. Advancing to front centre of the stage, in the full glare of the limelight, the Hero pointed an accusing hand at the cowering figure of the Villain, as he slunk away towards the wings, and addressed him somewhat as follows:

> "Villain! You have burnt down my house, destroyed my fair name, ruined my career, left me penniless, friendless and forlorn; seduced my wife, abducted my daughter, driven my aged father to a shameful death, brought down my mother's grey hairs in sorrow to the grave! But, Villain, I warn you—do not go *too* far—do not go *too* far!"

The French are a little more subtle; they have coined the ironical aphorism:

> *Cet animal est très méchant:*
> *Quand on l'attaque il se défend.*

The propensity to label an animal vicious because it defends itself when attacked is as widespread in the activities of public and private life as in the realms of biology and natural history. Provocation, indeed, is recognized by the criminal law as a potent factor—it may altogether excuse a common assault, provided that the force used be not disproportionate to the provocation offered. In homicide it may reduce the offence from murder to manslaughter, if the provocation was sudden and exceedingly grave, and no "cooling-time" has elapsed (*R.* v. *Maddy* (1672) 1 Ventris, 158). In no other crime is the flexibility of the code of punishment so striking as in this of manslaughter, where the penalty may vary, according to circumstances, from life imprisonment to a fine, or even recognizances to be of good behaviour. And it is right that this should be so, for provocation may be of many degrees and, as we have tried to illustrate in the last foregoing paragraph, the reactions of those who may be exposed to it are incalculable, and of infinite variety.

Patience under extreme provocation finds its most classic example in the character of Job. This patriarch suffered enough calamities for several ordinary lifetimes—the destruction of his crops, the loss of his flocks and herds, the violent deaths of his children, and the affliction of a painful disease. Yet, it is recorded, "he held fast his integrity" and submitted himself to the heavenly will. Jonah, on the other hand, rebelled strongly against his misfortunes; one can see his point of view when, after being thrown into a tempestuous sea, swallowed by a whale and living in its belly three days and three nights, he was "vomited out upon the dry land" and forthwith ordered (without, apparently, the opportunity for a bath or even a change of clothing) to proceed to Nineveh and proclaim its approaching overthrow. On top of all this, when the inhabitants repented, they were spared, so that his prophecy came to nought. What led to his final outburst was the comparatively trivial affair of the gourd "which came up in a night, and perished in a night," first protecting him against the fierce heat of the sun and then withering and leaving him unsheltered. At this stage, having gone through so much, he at last lost his temper and defiantly insisted—"I do well to be angry, even unto death."

Characters in history and legend have reacted to provocation in widely varying ways. Medea, the princess of Colchis (the modern Georgia), who helped Jason to win the Golden Fleece, punished his infidelity by murdering their two children and sending his new bride a poisoned garment which caused her to perish in agony. This, perhaps, was going too far. Hamlet, on the other hand, finding his suspicion confirmed that his father has been murdered and sent to perdition by Claudius, who has seduced the widow and usurped the crown, spends the best part of five acts in inactivity, brooding over his wrongs and soliloquizing upon life, death and eternity; not until Claudius' villainy has culminated in the fatality of the poisoned wine is Hamlet at last goaded into the act of revenge.

Such extreme cases, however, are rare; in the real world provocation most often arises under the wear and tear of matrimonial life. The poets of the Renaissance have celebrated the historic patience of Grizelda—the exemplary wife who uncomplainingly endured her husband's neglect, infidelity, abuse and even blows, and still preserved her love for him unimpaired; the story in Boccaccio, Petrarch and Chaucer has a happy ending—better than her ruffian of a spouse deserved. Nowadays the Divorce Division, in dealing with petitions based upon cruelty, has frequently to consider the effect of provocation on the one side or the other. It is a problem very difficult to disentangle since (as the story of Jonah illustrates) it is the last straw that breaks the camel's back. One wonders, for example, what degree of addiction to "viewing" and "listening-in," on the part of a husband, was sufficiently provocative to cause the wife, in a recent case, to threaten to put an axe through the radio, the television-set and the husband himself, at one fell swoop, and subsequently to chase him with a carving-knife into the street. These are ill-natured and unwifely practices; but we are not at all sure that the law, with its insistence that the course of cruelty must have endangered life, limb or health, does not itself provoke desperate spouses to a more impetuous display of hostility than they might otherwise indulge. In the Scandinavian States things are ordered in a far more civilized way. In Copenhagen a husband has recently obtained a divorce because every evening, when he had carefully rolled up his tube of tooth-paste from the empty end, his wife persisted in squeezing it in the middle. Freudians will probably find in this *corpus delicti* a phallic symbol; but the story shows that the most apparently trivial acts may become intolerable by constant repetition, and that provocation, long and patiently endured, may eventually go *too* far.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Variation of order under National Assistance Act*, 1948, *s.* 44 (6)—*Arrears.*

Where an affiliation order is amended under the provisions of s. 44 (6) of the National Assistance Act, 1948, to provide for the payments under the order to be made thereafter to the National Assistance Board, does the right to enforce and receive payment of the arrears outstanding at the date of the varying order or such a proportion of those arrears as accrued during the period assistance was given to the illegitimate child up to the date of the varying order, pass to the board?

It is noted that the wording of the subsection is similar to s. 3 of the Affiliation Orders Act, 1914, and the writer has referred to 95 J.P.N. 40, where certain arguments relative to s. 5 of the Poor Law Amendment Act, 1844 and s. 3 of the Affiliation Orders Act, 1914, are set out.

A similar provision was, of course, contained in s. 7 of the Bastardy Laws Amendment Act, 1872, and there the wording of the section "such proportion of the payments then due or becoming due under . . ." left one in no doubt that certain arrears, at least, could be recovered by the council. This section is repealed by the National Assistance Act, 1948, but although s. 44 of the latter Act is in substitution therefor, the wording of the section is different from that in s. 7 of the Bastardy Laws Amendment Act, 1872, in so far as no reference is made in s. 44 to payments then due, *i.e.*, at the date of the varying order.

The writer's opinion is that the arrears are not enforceable by the board and he would be glad to know whether you agree.

S.R.W.R.

Answer.

We agree with our learned correspondent for the reasons given by him.

2.—Commons Act, 1899—*Parish council as parochial committee—Expenses.*

In 1925 my council made a scheme of regulation under the Commons Act, 1899, in respect of a common. The scheme, which was confirmed by the Minister of Agriculture and Fisheries, was in the model form. The council, in accordance with s. 4 of the Act of 1899, delegated their powers of management to the parish council and since that date the parish council have managed the common and defrayed, as expenses of the parish council, the costs of management. A question has now arisen on a particular point of interpretation and there has, as a result, been a closer examination of the terms of the Commons Act, 1899. It is clear by s. 3 that the management of the common vests in the district council and, although s. 4 enables delegation to be to the parish council, the parish council is not acting in that capacity but as a parochial committee, *i.e.*, an offshoot of the rural district council.

Section 5 of the Act provides that the parish council "may agree to contribute the whole or any portion of the expenses of and incidental to the preparation and execution of a scheme for regulation and management of any common . . ." It is now considered that these words are not wide enough to permit the parish council to defray the day to day expenses of management, but limit such expenditure to the preliminary expenses of getting the scheme into operation. Section 11 of the Act requires the district council to reimburse all expenses incurred by the Minister of Agriculture and Fisheries in relation to a scheme under the Act "and all expenses of and incidental to the preparation and execution of the scheme." It will be observed that these words are identical with the words quoted from s. 5 and appear to relate to the initial stages of the regulation of a common. I should be grateful if you could advise me whether there is any other provision which would authorize a parish council to defray expenses incurred by them acting as a parochial committee in connexion with the management of a common under a scheme of regulation. ALBAN.

Answer.

We agree with you on the legal point, for the reasons you give, and we do not think the parish council can use their own money for this purpose.

3.—Housing Act, 1949—*Improvement grants—Title of applicant.*

Where a grant is made by a local authority for improvement of housing accommodation under s. 20 of the Act it is provided by subs. (3) (*c*) that the local authority shall satisfy themselves that an applicant has in every parcel of land on which the improvement works are proposed to be carried out (other than land proposed to be sold or leased to him under s. 9 of that Act) an interest constituting either an estate in fee simple absolute in possession or a term of years absolute whereof a certain period remained unexpired. We have been asked to advise whether a local authority may make a grant where there is a mortgage on freehold property. It appears to us that under the Act they can do so, as the estate in fee simple absolute remains vested in the borrower. It may be however that we have missed some point in the Act, as it appears to us somewhat inequitable that the person who has mortgaged a house can obtain a grant by which restrictions will be imposed on the security of the mortgage. We shall be much obliged by your views as to whether a local authority can make a grant in such a case, and also whether it is advisable to have a proper investigation of title prior to any grant being obtained. ENOU.

Answer.

On the last point, since it is the local authority's duty to be satisfied upon the applicant's title, we think they may have to make an independent investigation where he does not produce the necessary evidence. As regards the mortgagee, *see* s. 24 (2). It seems clear that, as you say, the mortgagor is the owner entitled to improve, as he could do apart from the Act, if he raised the money, *e.g.*, on second mortgage. We take it that Parliament considered the improvement of the property (which ordinarily benefits the mortgagee as well as the mortgagor) to be sufficient compensation to the mortgagor for the restrictions imposed by s. 23.

4.—Husband and Wife—*Custody of children—Access—Wife refusing access as required by order.*

We shall be grateful if you will let us know what action the husband can take in the following circumstances. The wife deserted the husband, taking with her their infant daughter. She subsequently obtained an order for the custody of the child under the Guardianship of Infants Acts, and for payment of maintenance by the husband, but the order provided that the husband should have access to the child at any reasonable time and that the wife should allow the child to reside with the husband for a fortnight's holiday each year at a suitable time or times. Subsequently the husband obtained a divorce from his wife on the ground of her desertion. Now the wife is refusing to allow the husband to have access to the child because she alleges that any meeting between them upsets the child and is bad for her health. The husband denies the truth of this and further alleges that if it is true it can only be because the wife has turned the child against him. In his view the child is fond of him. SIDFOR.

Answer.

It is assumed that the High Court did not deal with any question of custody and access. If the order of the magistrates' court specifically requires that the wife grant access to the children and she refuses to comply, proceedings can be taken against her in the magistrates' court under s. 54 (3) of the Magistrates' Courts Act, 1952.

5.—Landlord and Tenant Act, 1954, s. 57.

The council are owners of shop premises which are let on a lease expiring in 1956 and the lessee has applied to the council for a renewal of the term, offering an increased rent. If the only objection to the granting of a renewal of the lease is that the amount of rent offered is not sufficient, in my opinion, the council would be unable on these grounds alone to apply to the appropriate Minister for a certificate under s. 57 which can be issued if it is requisite for the purposes of the council that the use or occupation of the property shall be changed. I shall be obliged if you will let me know whether you agree with this view and also that you agree that the council's only remedy on a disagreement as to the amount of rent is to follow the procedure laid down in the Act for referring the matter to the county court. EMONT.

Answer.

We agree.

6.—Licensing—*Change of name of licensed premises.*

I have received an inquiry from a brewery company, relating to a proposal to change the name of one of their licensed houses and asking for the procedure which is to be followed to effect such change. As far as I am aware there is no provision in the liquor licensing laws laying down any procedure, but I should have thought that notice should be given by the brewery to the clerk to the justices, the rating authority and to the Commissioners of Customs and Excise. OLFRO.

Answer.

The Licensing Acts contain no procedure for effecting a change in the sign-name of licensed premises. We suggest that a convenient time to make the change is when the licence comes up for renewal at the general annual licensing meeting. The licensing justices may then be asked to renew the licence for the same premises as newly described. It will be a courtesy to acquaint the rating authority and the Commissioners of Customs and Excise of the change.

We answered similar questions in our vol. 98 at p. 246, vol. 113 at p. 196 and vol. 117 at p. 471.

7.—Licensing—*Transfer—Licensing justices reluctant to grant transfer to owner's nominee where public house managed by employed manager.*

We are concerned for the owners of a busy public-house in the centre of the city, which they normally control through a manager who, in the past, has held the licence. From an administrative point of view, the owners feel that it is more convenient for the actual licence to be held by their sales director (he already holds certain licences in the city and is recognized by the police as being a man of integrity and experience), as this avoids difficulties which can sometimes arise on a change of manager.

On an application to this effect being made to the justices, after the prior grant of a protection order to the sales director, the justices stated that in their view the licence should be held by the manager (or tenant, if any) as being the person responsible for the day to day administration of the premises and residing upon them. This point of view was supported by the police, although it is understood that in other divisions it often happens that a large number of licences are held by an officer of the company owning the property concerned.

In this case, the owners installed a new manager, who came to them with excellent references, and then in deference to the wishes of the bench, lodged an application for the transfer of the licence to this manager. It soon became apparent, however, that the manager was unlikely to prove suitable in this type of house, and the justices at the next transfer sessions further adjourned the transfer application and extended the scope of the protection order under the provisions of s. 23, subs. (5) and (6) of the Licensing Act, 1953. On behalf of the owners, we suggested that it would probably be much more convenient if the transfer was in fact granted to their sales manager, in accordance with our original application, on an undertaking by the owners that they would make application for a full transfer to whoever the manager might be as soon as it was established that he was competent to control the house in question. This proposal was not accepted by the justices.

A week or two later it became necessary, for serious reasons, to discharge the manager in question, and the application for a transfer to him was accordingly withdrawn, and the justices were again asked, as a temporary measure, to transfer the licence to the sales director. This they have again refused to do and have again purported to extend the scope of the protection order until the next transfer sessions, stating that they hope that the owners will then be able to ask for the transfer to another manager.

The owners' difficulty is that, in the absence of some two or three months' actual experience of a manager, it is difficult to decide whether he is the right person for an important house, and in these days it is not easy to obtain competent managers. It may well be that the owners will be faced, within the next 14 days, with the necessity of making application for the transfer to a man whose qualifications have not yet been established, or risking a state of affairs in which the justices might feel that their wishes were being ignored.

We are a little disturbed ourselves at the continued adjournment of the application and purported extension of the protection order, and shall be glad to know if, in your view, the justices, under the provisions of s. 23, can in effect defer reaching a decision on a transfer application by granting a whole series of adjournments.

In addition, we shall be glad to have your opinion as to whether, in the circumstances set out above, the justices ought to reject an application for the transfer of a licence to an applicant who is admittedly a fit and proper person to hold a licence (already holding others in the same district) solely on the ground that he does not reside on the premises. NETER.

Answer.

Strong arguments may be advanced on general grounds in support of the view that, in the case of a managed house, the licence shall be held by a nominee of the owner: equally strong arguments on general grounds support the view that the licence shall be held by the resident manager who is the person actually responsible for the day by day conduct of the licensed business. Sometimes an easy compromise secures the result that the licence is held jointly by both.

In the case outlined by our correspondent, the licensing justices are of opinion that the licence of this particular house should be held by the resident manager, and it is not for us to say that they are wrong.

Section 23 (5) (6) of the Licensing Act, 1953, does not contemplate repeated adjournments of an application for transfer with consequent repeated extensions of the protection order. Yet, while the impasse continues, they may do no other than refuse the transfer, so as to give rise to a right of appeal to quarter sessions under s. 35 of the Act. If this step is taken their refusal would restore as licence holder a person who has no further interest in the business and the effect will be that the premises must close pending the appeal, unless the licensing justices can be persuaded to extend the protection order pending the appeal—which, according to note (*j*) in *Paterson's Licensing Acts*, 62nd edn., at p. 837, is "sometimes granted."

8.—Prosecution—*Contravention of byelaws—Who may prosecute.*

Can the police lay information and prosecute for offences under the byelaws made pursuant to the Local Government Act, 1933 ?

ERUND.

Answer.

The query is ambiguous. In one sense, most byelaws of local authorities are made "pursuant to" the Act of 1933, because that Act contains the procedural requirements. We take it, however, that the query means "byelaws authorized by" the Act. The answer then is yes, because the Act of 1933 does not contain a restriction similar to s. 298 of the Public Health Act, 1936, or s. 253 of the Public Health Act, 1875.

9.—Road Traffic Acts—*Brakes on pedal cycle—Cycle with fixed gear and cycle with pedals acting directly on a wheel.*

This may in fact, appear to be an elementary question but having regard to reg. 6 (*a*) of the Brakes on Pedal Cycles Regulations, 1954, and to reg. 4 (1) (*a*), I should be grateful of your opinion as to the position of a pedal cycle fitted with fixed gear on the rear wheel so far as the fitting of brakes is concerned.

JIGARO.

Answer.

The ordinary fixed-gear cycle is governed by reg. 4 (1) (*a*), and requires a brake on the front wheel or wheels.

Regulation 6 (*a*) relates to the old fashioned "penny-farthing" cycle, now seldom seen on the road, or to any machine with a similar method of direct propulsion.

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A. E. OSWIN,
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76 Banbury Road,
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April 9, 1955.

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D. G. DODDS,
Secretary.

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